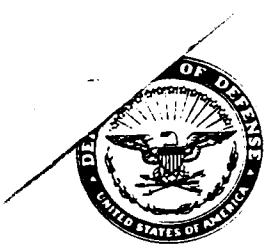


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LETTER TRANSMITTING REVISED DRAFT COVENANT DEFERRAL REQUEST
MILLINGTON SUPPACT TN
8/27/1998
NAVFAC SOUTHERN



DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL

COUNSEL FOR THE
SOUTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
2155 EAGLE DRIVE, P.O. BOX 190010
NORTH CHARLESTON, SOUTH CAROLINA 29419-9010

27 August 1998

David L. Harbin, Esq.
Office of the General Counsel
Tennessee Department of Environment & Conservation
7th Floor, Tennessee Tower
312 8th Avenue, North
Nashville, TN 37243-1548

Subj: PROPOSED EARLY TRANSFER OF NSA MEMPHIS AIRFIELD PROPERTY
AND FACILITIES TO THE CITY OF MILLINGTON


Dear David:

Pursuant to our telephone conversation on August 19th, please find enclosed our revised draft Covenant Deferral Request (CDR) for NSA Memphis. We have tried to word our request so that it may be readily understood by those in the public generally unfamiliar with the early transfer provisions set forth in CERCLA Section 120(h)(3)(C).

Please advise at your earliest convenience when it would be convenient for you to meet with us to further discuss this request. If you would like to separately discuss at that time the question of possible future property realignment, I would ask that you arrange for attendance at the meeting by all interested State, County and City officials and that it be held in Memphis for the convenience of the majority of expected participants.

You may reach me in regards to this request at (843) 820-5708. We appreciate your cooperation in these matters.

Sincerely,


STEPHEN A. BEVERLY
Associate Counsel (Environment)

cc: CO, NSA Memphis
BCT

**COVENANT DEFERRAL REQUEST
FOR
NAVAL SUPPORT ACTIVITY, MEMPHIS
MILLINGTON, TENNESSEE**

I. Background

In accordance with actions taken pursuant to the Defense Base Closure and Realignment Act of 1990, the former Naval Air Station (NAS), Memphis, has been operationally closed and realigned into the Naval Support Activity (NSA) Memphis. This realignment made the northern portion of the former NAS Memphis available for community reutilization. Both environmental investigation and clean-up activities have been ongoing onboard the former NAS Memphis since 1983. However, because certain response activities remain to be completed on portions of the property being made available for community reuse, federal law requires that the Governor of the State of Tennessee approve any proposed deed transfer of those areas to any non-federal entity.

Section 120(h)(3)(C) of the Comprehensive Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et. seq.) sets forth the specific conditions upon which State approval of early (i.e., pre-final remediation complete) transfers of federal facilities should be granted. This request is intended to facilitate the granting of such approval by Governor Sundquist and is consistent with Department of Defense (DoD) guidance for the early transfer of DoD facilities like NSA Memphis which are not on the Environmental Protection Agency's (U.S. EPA's) National Priorities List (NPL). The format used comes from guidance developed by U.S. EPA for the early transfer of federal NPL facilities. This request will be used as the basis for the development and execution by the Navy of a Finding Of Suitability for Early Transfer (FOSET).

II. Property Description

The entire property to be deed transferred (both with and without any hazardous substance contamination) comprises approximately 1,867 acres of land and roughly seventy (70) buildings or other structures situated within the northern portion of NSA Memphis. It is contemplated that this property will be conveyed through two mechanisms, a Public Benefit Conveyance (PBC) of 538 acres known as the "Airfield Parcel" to the City of Millington for use by the Millington Municipal Airport Authority and 1,329 acres known as the "Non-Airfield Parcel" to the City of Millington for use by the Millington Industrial Development

Board, through an Economic Development Conveyance (EDC). The areas of hazardous substance contamination on both parcels are depicted in Appendix A. Land surveys will be conducted prior to the deed transfer of either parcel to delineate these areas from those not falling under the scope of this request.

The Airfield Parcel contains the primary runway; taxiways; clear zones; aircraft parking apron; two aircraft hangars, and numerous other airfield support structures in addition to open land. The Non-Airfield Parcel surrounds the Airfield Parcel, and consists of open land, recreational facilities, as well as various other facilities and buildings which supported the operation of the former Air Station. A complete listing of the facilities located on each parcel is included in the Environmental Baseline Survey for Transfer (EBST) previously prepared to assess the environmental condition of both parcels. That document, which is currently being updated to reflect the latest site data collected, will be provided to the City of Millington prior to deed transfer.

III. Nature and Extent of Hazardous Substance Contamination

The investigation of hazardous substance contamination at NSA Memphis has revealed primarily one concern, that being solvent contamination, chiefly, trichloroethylene (TCE), in portions the fluvial deposits aquifer which underlie the facility. There is no evidence of any off-site migration of such contamination. The fluvial deposits aquifer has not previously been used as a source of drinking water for NSA Memphis. Based on all data collected to date, there is no basis for concluding that the underlying Memphis aquifer, a partial source for NSA Memphis' potable water, has been impacted by such contamination. Such data further indicates that the Cockfield/Cook Mountain Formations confining layer, which is present between the fluvial deposits aquifer and the deeper Memphis aquifer, has historically and should in the future, adequately protect the Memphis aquifer from the downward movement of contamination where such exists within the fluvial deposits aquifer.

The highest concentration of TCE contamination detected in the fluvial deposits aquifer was 1,400 parts per billion (ppb). The majority of samples analyzed indicate concentration of less than 100 ppb. The U.S. EPA established Maximum Contaminant Level (MCL) for TCE in drinking water is 5 ppb. Although the fluvial deposits aquifer has not historically been used as a drinking water source, it is classified under Tennessee regulations as a drinking-water aquifer making the 5 ppb MCL the applicable cleanup goal for this aquifer. The random distribution of the TCE contamination discovered, coupled with site-specific hydrogeology, appear to limit the range of practical remedial alternatives to address such contamination. However, those alternatives still

need to be fully evaluated. The areas of known hazardous substance contamination in groundwater are also reflected in Appendix A. The table below describes those particular sites where hazardous substance (HS) investigative and/or remedial measures still need to be completed.

Site	Description	HS Contamination Concerns / Site Status
SWMU 5	Former Aircraft Fire Fighting Training Area (Non-Airfield Parcel)	<u>Concern:</u> Portion of fluvial deposits aquifer contaminated with carbon tetrachloride. <u>Status:</u> This site will be further investigated and then incorporated into the AOC A Corrective Measures Study as necessary (work plan currently under review).
Turkey Shoot	Former VFW Turkey Shoot Area (Non-Airfield Parcel)	<u>Concern:</u> Surface soil contaminated with lead, which poses a possible ecological risk to the American Robin and short-tailed shrew (or similar species). <u>Status:</u> Removal of lead contaminated soil currently scheduled for Nov/Dec 1998.
AOC A	Northside Fluvial Deposits Groundwater (area of contamination, primarily around aircraft parking aprons).	<u>Concern:</u> Portion of fluvial deposits aquifer contaminated with chlorinated solvents. <u>Status:</u> Fluvial deposits aquifer contamination has been incorporated into the AOC A Corrective Measures Study (CMS) is currently underway.

IV. Analysis of Intended Future Land Use

The Millington Base Reuse Committee (the Local Redevelopment Authority), has a Reuse Plan, Base Reuse & Economic Development Plan, Memphis Naval Air Station, Millington, Tennessee, Final Report, (29 August 1995), which will serve as the blueprint for community reuse of the parcels in question and their associated facilities. This plan calls for the use of the former airfield as a municipal airport, which will serve as one component of a larger combined industrial / business / air park. The goal of the Committee's Reuse Plan is to maintain the option of operating an airport, while providing diversity to support additional job-generating industrial activities, should the airport later prove to be economically infeasible to operate. With the exception of one area north of the former Naval Hospital which is not in close proximity to any of the above identified hazardous substance sites, residential reuse is not planned for any portion of the parcels to be conveyed by the Navy.

V. Results of Risk Assessments Performed

Risk assessments have been performed in conjunction with investigative activities conducted at each Solid Waste Management Unit (SWMU) or Area of Concern (AOC) with identified hazardous substance contamination. The results of these assessments may be summarized as follows:

1. **SWMU 5:** The risk assessment performed revealed that the only potential future human health risk associated with this site would be from exposure to groundwater from the fluvial deposits aquifer beneath the site. There is currently no direct exposure pathway for such contamination because there are no water supply wells on the property which utilize the fluvial deposits aquifer. All water used for drinking, irrigation or industrial process purposes is currently obtained through the Navy's potable water system which draws from the Memphis and Ft. Pillow aquifers. It is believed that any risk associated with the presence of such subsurface contamination may effectively be managed through the utilization of appropriate deed restrictions to prohibit the installation of shallow water supply wells for the extraction or usage of groundwater from the fluvial deposits aquifer unless subsequent testing shows that any remaining contamination has fallen to levels determined to be safe for human consumption (i.e., below the applicable MCL). These restrictions will apply to known areas of groundwater contamination and within a buffer zone to take into account any movement of contamination laterally down gradient over time. Although separately considered, ecological risk was not identified as a concern at this site

2. **Former VFW Turkey Shoot Area:** The risk assessment conducted for this site focused on both those potential human health and ecological risks associated with the presence of lead shot in soils. Residual lead concentrations were discovered in excess of the U.S. EPA's lead action level for residential land usage of 400 milligram per kilogram (mg/kg) but were below calculated human health risk associated with assumed commercial / industrial usage of this property. The assessment conducted also noted that the bio-absorption of lead is generally limited when consumed in shot form. The only ecological risk associated with the contamination found at this site was potential adverse impact to the American Robin and short-tailed shrew (or similar species) which might consume the lead shot. That assessment was based upon the highest lead concentration identified on any portion of the site and hence, may not be truly representative of actual ecological risk. Nonetheless, it is the Navy's intent to eliminate potential human health and/or ecological risk by removing shot and lead-contaminated soil below 400 mg/kg. Removal activities are scheduled to be undertaken in November or December of this year.

3. **AOC A:** The risk assessment for this site focused on groundwater in the fluvial deposits beneath and extending out from the aircraft apron area situated on the Airfield Parcel where chlorinated solvent contamination has been

discovered. As reflected in Appendix A, groundwater contamination associated with this site also extends partly beneath the Non-Airfield Parcel.

As is the case with SWMU 5, there is currently no direct exposure pathway for the groundwater contamination at this site because there are no water supply wells on the property which utilize the fluvial deposits aquifer. Similarly, all water used for drinking or other purposes is supplied through the Navy's potable water system which draws from the Memphis and Ft. Pillow aquifers. It is believed that any risk associated with the presence of groundwater contamination at this site may effectively be managed through the utilization of appropriate deed restrictions to prohibit the installation of shallow water supply wells without prior Government approval or the future usage of such ground waters unless subsequent testing shows that any remaining contamination has fallen to levels safe for human consumption. All groundwater restrictions will apply to known areas of contamination and within a buffer zone to take into account any movement of contamination laterally down gradient over time. Upon evaluation, ecological risk was not identified as a concern at this site

VI. Response / Corrective Action and O & M Requirements

The *Corrective Action Management Plan* (CAMP) for NSA Memphis, Revision 4, dated 23 October 1997, provides the strategy, schedule, and timeline for implementing the corrective action program. In summary, the CMS for the fluvial deposits groundwater is scheduled to be completed in early 1999, with remedy implementation (presumed to be natural attenuation) to follow. Operation and Maintenance / Long-Term Monitoring will follow as necessary. The projected timeline for the selection and completion of remediation, as taken from the *Correction Action Management Plan*, is attached as Appendix B.

VII. Contents of Deed / Transfer Agreement

As required by CERCLA, the following or substantially similar provisions will be included in the quitclaim deeds or other transfer documents which convey title to the Airfield and Non-Airfield parcels to the City of Millington as Grantee.

a. Notice

In accordance with Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. 9620(h)(A)(i)), you are advised that the Environmental Baseline Survey for Transfer (EBST), attached hereto as Exhibit ____, provides all available information based upon a complete search of agency files of those hazardous substances known to have

been stored for one year or more, released or disposed of on the property, to include if known, the date such storage, release or disposal took place and a description of all remedial action(s) taken.

b. Covenant:

In accordance with Section 120(h)(3)(A)(ii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. (h)(3)(A) (ii)), the United States warrants that it shall take any additional remedial action found to be necessary with regards to any hazardous substance(s) remaining on the property at the time of conveyance. This covenant shall not apply in any case in which any response action required is the result of an act or failure to act of the Grantee or its successors and assigns which results in a release of hazardous substances after the date of conveyance.

c. Access:

In accordance with Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. (h)(3)(A) (ii)), the United States reserves the right to access all portions of the Property for future environmental investigation, remediation or other corrective actions. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the United States. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of conveyance of the Property, or in which access is necessary to carry out a remedial action, response action or corrective action on adjoining property. Pursuant to this reservation, the United States and the State of Tennessee and their officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable notice to the Grantee or the then owner and any authorized occupant of the Property) to enter upon the Property and conduct investigations and surveys, to include drillings, test-pitting, borings, data and record compilation, and other activities related to environmental investigation and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment. Any such entry, including such activities, responses or remedial actions, shall be coordinated with the Grantee or its successors assigns, and tenants and shall be performed in a manner which minimizes interruption with Grantee's activities on the property.

d. Response Action Assurances:

The following assurances provisions will also be included in the quitclaim deeds or other transfer document(s) which convey title to the Airfield and Non-Airfield parcels to the City of Millington as Grantee.

1. The Grantee covenants and agrees for itself, its successors and assigns and every successor in interest to the Property or part thereof, that it shall not construct or permit to be constructed any well, and shall not extract, utilize, consume or permit to be extracted, any water from the aquifer below the surfaces of the ground within the boundary of the Property for the purpose of human consumption, or other use, unless such groundwater has been tested and found to meet applicable environmental standards for human consumption, or such other use, and such owner or occupant shall first have obtained written approval of the United States. The costs associated with obtaining use of such water, including, but not limited to, the costs of permits, studies, analysis or remediation, shall be the sole responsibility of the Grantee, its successors and assigns, without cost whatsoever to the United States.
2. The Grantee covenants and agrees for itself, its successors and assigns and every successor in interest to the Property or part thereof, that it shall not excavate or conduct any other soil disturbing activities within those

areas of known or suspected surface or subsurface soil contamination identified in the Environmental Baseline Survey for Transfer (EBST) provided to the Grantee without prior written approval of the United States. Any costs associated with the need to obtain any permits or to utilize personal protective equipment or to undertake other environmental or worker health and safety measures in compliance with applicable laws or regulations when dealing with potentially contaminated soils in such areas shall be the sole responsibility of the Grantee, its successors and assigns, without cost whatsoever to the United States.
3. Grantee covenants and agrees for itself, its successors and assigns and every successor in interest to the Property, or part thereof, that a party occupying the Property shall not hinder or prevent the United States from constructing, upgrading, operating, maintaining and monitoring any groundwater treatment facilities and groundwater monitoring network or engage in any activity that will disrupt or hinder further remedial investigation, response actions or oversight activities on the Property or adjoining property required.
4. The United States shall take all necessary response actions with regards to any hazardous substances remaining on the property at the time of

deed conveyance. A projected work completion schedule associated with such actions is included as Attachment ____, and be reviewed by the U.S. Navy, U.S. U.S. EPA and the State of Tennessee on an annual basis and updated as necessary as part of the annual update of the Corrective Action Management Plan for this facility.

5. The U.S. Department of the Navy shall submit on an annual basis through established channels, appropriate budget requests to the Director of the Office of Management and Budget that adequately address those agreed upon schedules for investigation and completion of all necessary response action reflected in annual updates to the CAMP, subject to future congressional authorizations and appropriations. The currently projected budget requirements for the completion of al required response actions are as follows:

<u>Fiscal Year</u>	<u>Projected Cost</u>	<u>Funded Activity</u>
1999	\$1,297,000	Remedial Design Implementation
2000	\$ 591,000	Remedial Design Implementation
2001	\$ 188,000	Long-Term Monitoring
2002	\$ 155,000	Long-Term Monitoring
2003-2015	\$ 105,000/yr	Long-Term Monitoring
Total	\$3,496,000	

6. When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of conveyance has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken.

VIII. Responsiveness Summary:

During the public comment period, the Navy received _____ comments from the public on the draft Covenant Deferral Request. These comments have been provided to the State of Tennessee and U.S. U.S. EPA and have been addressed in this final CDR. The Navy's responses to any unresolved comments are attached as Attachment E to this request.

IX. Transferee Response Action Assurances and Agreements:

Not applicable. The Grantee will not be assuming any obligations to conduct response actions on the property associated with hazardous substances remaining on the property at the time of conveyance. The Navy shall retain responsibility for the completion of all necessary response actions consistent with CERCLA and its RCRA/HSWA permit obligations.

Suitability Declaration

As the cognizant DU.S. Department of Defense (DoD) official authorized to make such determination, I, the undersigned, have determined that under the proposed land-use conditions and deed restrictions to be employed that the above described property is suitable for the proposed reuse.

Date

William J. Cassidy, Jr.
Deputy Assistant Secretary of the Navy
(Conversion And Development)